



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/169184

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 30, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 27, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$374.00 in FoodShare (FS) benefits, under claim number [REDACTED], for the period from October 1, 2014 through January 31, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jeanie Ortiz

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. During the overpayment period the petitioner (CARES # [REDACTED]) was a resident of Winnebago County. She was the only person in her household. The petitioner has since moved out of state.

2. On September 15, 2015 the agency sent the petitioner a notice of FoodShare (FS) overpayment stating that she was overpaid \$374.00 in FoodShare (FS) benefits, under claim number [REDACTED], for the period from October 1, 2014 through January 31, 2015.
3. On July 22, 2014 the agency sent the petitioner a notice stating that she had to report to the agency by the 10<sup>th</sup> day of the following month in which her income increased above the budgeted amount. The agency was budgeting \$1,071.92 in monthly gross income. This consisted of \$874 per month from social security disability (SSDI) and \$197.92 from her employment with [REDACTED].
4. In April 2014 the petitioner's monthly gross income increased to \$1,245. This was more than 130% of the Federal Poverty Level. The petitioner never reported her increase in income.
5. In July 2014 the petitioner completed a six month report form. She did not report an increase in income on that form. The agency continued to budget \$1,071.92 in monthly gross income.
6. In July 2015 the agency became aware of the wage discrepancies used in petitioner's case through an alert from the State Wage Income Collection Agency (SWICA). It thereafter received verifications of petitioner's wages between April 2014 and January 2015 from her employer.
7. The petitioner's monthly gross income was \$1,460.62 in October, November, and December 2014. In January 2015 the petitioner's monthly gross income increased to \$1,475.52.
8. The petitioner received \$116 in monthly FS benefits from October to December 2014. She received \$90 in monthly FS benefits in January 2015. Using the petitioner's actual income and giving the petitioner credit for the allowable FS deductions the petitioner was only eligible for \$16 in FS benefits from October 2014 to January 2015.
9. On October 6, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error or even if the client error was unintentional. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, §7.3.1.2. To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

Under FS rules, an FS household needs to report increased income when the new income causes total household income to rise above 130% of the federal poverty level. FS Handbook, §6.1.1.2. 130% of poverty for a one-person household in 2014 was \$1245.

The petitioner argues that failing to report her increase in income was unintentional. The agency has characterized this overpayment as client error, and acknowledges that the error was unintentional. Under law and policy the agency must establish and collect an overpayment when it is caused by unintentional client error. The petitioner does not dispute the calculations or the figures used in determining the overpayment amount.

I note that the total overpayment period goes back to June 2014. The overpayment period from June 1, 2014 through September 30, 2014 is under a different overpayment claim number. The petitioner appealed that overpayment claim number in a separate appeal decided by ALJ Kelly Cochrane (see FOP/168009). ALJ Kelly Cochrane dismissed this previous appeal.

**CONCLUSIONS OF LAW**

The agency correctly determined that the petitioner was overpaid \$374.00 in FoodShare (FS) benefits, under claim number [REDACTED], for the period from October 1, 2014 through January 31, 2015.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17th day of November, 2015

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 17, 2015.

Winnebago County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability